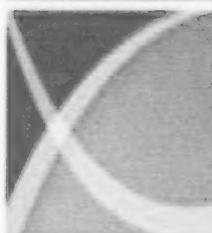




Indian and Northern
Affairs Canada Affaires indiennes
et du Nord Canada

Aboriginal Auditor General

**Discussion paper
prepared for AANDC
Audit Committee
June 2011**



Canada

Discussion Paper: An Aboriginal Auditor General

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Introduction

This discussion paper was commissioned by the Chief Audit and Evaluation Executive to serve as a means to discuss the relative value and viability of an Aboriginal Auditor General (AAG). As such, this paper does not provide recommendations but rather is intended to raise pertinent issues for consideration and discussion. More specifically, the paper explores the potential role for an AAG in terms of the following: its potential role amid existing accountability mechanisms; its potential authority and mandate; the risks of duplication with other oversight mechanisms; potential for capacity building and; alternative mechanisms for improved accountability among First Nations. The paper also includes a summary of the discussion of an AAG and First Nations accountability more broadly as it has unfolded over the last two decades.

Context

While at times tenuous, the modern relationship between First Nations and the Government of Canada has been defined by the principles of reconciliation and rebuilding. As the former Auditor General Sheila Fraser pointed out, "it has been the policy of governments to encourage First Nations to move toward greater autonomy and self-government." (Fraser 2006). This commitment was reinforced in November 2010 when the Government of Canada officially endorsed the *United Nations Declaration on the Rights of Indigenous People* "recognizing the right of First Nations to govern themselves" (Scoffield 2011). Any consideration of an Aboriginal Auditor General should be mindful of this paradigm of self-determination.

Any discussion regarding accountability measures needs to recognize the diversity of First Nations, in terms of their unique identities, histories and traditions, and their place along the continuum of self-government. Briefly stated, First Nations experience varying levels of capacity and autonomy and any notion of an AAG function must recognize this plurality.

Finally, it will be important to understand the role of existing oversight mechanisms as these will help to define the mandate of an AAG function. It is reasonable to suggest that a new AAG might call for a fundamental review of the OAG mandate. There may be a need to clarify the scope of the OAG with respect to First Nations oversight in order to avoid duplication, or perhaps an opportunity to transfer auditing responsibility from the OAG to an AAG.

An Aboriginal Auditor General

Existing Oversight & Reporting Mechanisms

The Office of the Auditor General (OAG) provides Parliamentarians with objective information on the spending and performance of government. The OAG is responsible for legislative auditing; more specifically, financial audits, special examinations and performance audits. Financial audits ensure that financial statements are an accurate reflection of spending practices. Special examinations refer to the auditing of Crown Corporations. Performance audits, as per the OAG website, "examine the government's management practices, controls, and reporting systems with a focus on results" (Office of the Auditor General of Canada 2011). The OAG has considerable discretion with respect to the area and scope of performance audits. The OAG reports are tabled in Parliament and then communicated to the media and the public. It is important to note that the Auditor General (AG) of Canada is not the auditor of First Nations. That said, the AG has become an important check on First Nations programs and spending in its oversight of federal programs.

Federal departments are required to report on a program's performance and rely on program managers to provide performance measurement data. In some cases, reporting requirements are a condition for funding renewal. In other cases, reports might be used internally to track performance, measure outcomes, or inform business plans and self-evaluations.

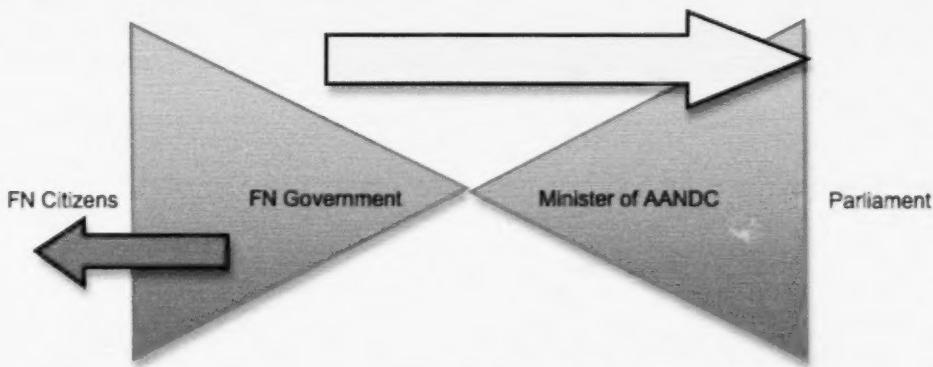
Those federal departments and agencies that offer programming to First Nations communities (primarily Aboriginal Affairs and Northern Development Canada and Health Canada but also Canadian Mortgage and Housing Corporation and Public Health Agency Canada) are able to provide Ministers with information on the spending and performance of these programs. In addition to program reporting, AANDC uses First Nations and Inuit Transfer Payment (FNITP), a web-enabled program, to track and monitor transfer payments to Aboriginal recipients. The system requires recipients to submit financial data and reports.

The internal Audit and Evaluation Sector (AES) at AANDC is responsible for providing the Deputy Minister with objective information regarding the department's risk management, control and governance processes and evaluating all grant and contribution programs on a five-year cycle. In order to fulfill this mandate, the AES sometimes relies on First Nations to provide new data and lines of evidence in addition to existing information. Evaluations are made public on the department's site.

Previous studies pertaining to accountability have suggested that there is a gap in the responsibility of First Nation governments to report to their own citizens and a lack of oversight with respect to recipient audits. While some First Nations have developed their own accountability mechanisms that involve reporting on their community's finances, there is currently no requirement for them to do so. Nor is there any formal mechanism to undertake recovery in the event of the misappropriation of funds.

The following diagram is intended to illustrate the various accountability relationships that operate in the First Nations and Crown context. The yellow arrow indicates the traditional, hierarchical accountability relationship from Chiefs and Band Councils to the Minister of AANDC, and then from the Minister to Parliament and Canadians. The red arrow represents a moral authority of First Nation governments to their own citizens, and accountability for programs and spending. The latter relationship is not currently governed by any set of institutions.

Diagram 1: Accountability Relationships



As First Nations move along the continuum of self-government, there is an opportunity to create greater accountability between First Nations and their citizens.

The author Patrick Sullivan refers to a similar opportunity in the Australian context. Sullivan points out,

"Rigorous hierarchical accountability is inefficient as information passes only slowly up the chain of command and provides little basis for pragmatic decision making. Both because it is inefficient and because it is not responsive to local needs, vertical accountability needs to be truncated, with a 'cut-out' at the local or regional level".
(Sullivan 2009, 69)

This "cut-out" may lend itself to an oversight function such as an Aboriginal Auditor General. Mary Ellen Turpel-Lafond, in her work for the Royal Commission on Aboriginal Peoples (RCAP), could foresee a transition . . .

"from governments under the *Indian Act* to autonomous governments, functioning under an inherent right of self-government, accountable directly to the citizenship of a First Nation along with a duty of accountability to other governments in the Federation of Canada" (Turpel-Lafond 1992, 4)

An Aboriginal Auditor General, or alternative oversight mechanisms, might have a role to play in supporting First Nations as they develop better accountability to citizens.

Authority

In the discussion of an Aboriginal Auditor General, a preliminary question might be: from what or whom does this institution draw authority? Where would such an office reside and to whom would it report?

An Aboriginal Auditor General could be placed under the authority of the Office of the Auditor General (OAG) of Canada, as is the case with the Commissioner on the Environment and Sustainable Development (CESD).

Such an arrangement allows for a new office or agent to borrow from the capacity, reputation and infrastructure of an existing institution in order establish its legitimacy. The OAG could retain discretion over financial and performance auditing of First Nations programs, while an AAG could conduct recipient audits of First Nation communities. Alternatively, an AAG could take over all auditing practices related to First Nations. In this scenario, an AAG might table reports annually in Parliament as does the CESD. However, it must be said that having an AAG that reports from within an existing federal agency could be seen by the Aboriginal community to be a continuation of paternalistic oversight by the Crown.

As an alternative, the mandate of the Auditor General of Canada might be expanded to include recipient audits of First Nations. This would hold First Nation governments more directly accountable for spending to their citizens, and would be an efficient option since it would make use of existing capacity and expertise within the federal government.

However, it must be noted that Bill C-2, the *Federal Accountability Act*¹, introduced in 2006, included a provision to enable the OAG to audit Aboriginal communities directly in their spending of federal money². The provision was subsequently retracted in response to concerns raised by the Assembly of First Nations (AFN) and the former Auditor General Sheila Fraser. Former Auditor General Fraser, in a statement to the Legislative Committee on Bill C-2 said, "...we do not believe it is our role to routinely audit recipients of grants and contributions ...this is the responsibility of the managers of those programs. Therefore, I expect that we would rarely exercise this option" (Fraser 2006). While the *Federal Accountability Act* gave the OAG "the right to audit funding to most First Nations," Ms. Fraser suggested that building "institutional capacity" among First Nations would more appropriately encourage the development of accountability mechanisms (Fraser 2006).

An AAG might be positioned within the established First Nations governance structure. The mechanism might be envisioned, instead, as Aboriginal Auditors General (AAGs), plural. Band Councils or Tribal Councils may choose to establish an Auditor General within their government, as did the Navajo Nation in the United States. According to its own Navajo Nation code, the AG is appointed by the Speaker of the Navajo Nation Council and subject to confirmation by the Council (Office of the Auditor General 2006). The OAG reside within the Legislative Branch of the Navajo Nation government and is responsible for financial and performance auditing (Office of the Auditor General 2006). First Nation citizens could request an audit of their government and an AAG would report findings to Parliament and the public, with perhaps a specific mandate to ensure reports are accessible to First Nation citizens. The federal role in this arrangement would be to offer support, capacity, training and consultation to AAGs in pursuit of their mandate. The federal government would have a limited role since it would be at the discretion of each First Nation government to establish such an AG function. However, smaller First Nations with limited capacity or resources would lack the capacity to establish such a function. The improved accountability that follows from increased audit oversight would largely benefit those First Nations that already have considerable governance capacity to begin with. Therefore, AAGs might be considered as part of greater, "supra" structure, independent of the OAG. The Assembly of First Nations (AFN) provides a good example of this level of organization. The AFN has been the main proponent of a separate AAG.

Close institutional proximity to the AFN, however, might be unfavorable for AAGs as its advocacy role could negatively affect the perception of AAGs independence. Instead, Aboriginal and non-Aboriginal citizens, interested governments, advocacy groups and non-profit organizations, may lobby the federal government for legislation that would create an independent, self-directing AAG or AAGs.

¹ Bill C-2, an Act providing for Conflict of Interest Rules, Restrictions on Election Financing and Measures Respecting Administrative Transparency, Oversight and Accountability (the Federal Accountability Act).

² Bill C-2 would expand the mandate of the OAG, "to what has been called "following the dollar" to any recipients of public funds who have received \$1 million or more over five years in the form of grants, contributions, or loans" (Sheila Fraser, *Opening Statement to the Legislative Committee on Bill C-2*, 2006 9-May, http://www.oag-bvg.gc.ca/internet/English/osh_20060509_e_23458.html (accessed 2011 29-April)).

Duplication

Duplication is a considerable risk in the discussion of an Aboriginal Auditor General function. First Nation communities are responsible for financial reporting to AANDC and other federal departments and agencies. They are also subject to federal audits and evaluations, and must fulfill program-specific reporting requirements for the purposes of performance measurement. Furthermore, the Auditor General of Canada, while not the auditor of First Nations directly, has become an important check on First Nations programs and spending, in its oversight of federal programs.

The oft-cited December 2002 Report of the Auditor General of Canada to the House of Commons, *Streamlining First Nations Reporting to Federal Organizations*, estimated 168 reports were required annually of each community. First Nations reported that scarce local resources were being directed towards reporting and auditing rather than service delivery within their communities (Auditor General of Canada 2002). The federal government responded to the Auditor General's report with a commitment to improve the reporting structure across and within departments. An AAG would need to be mindful of existing reporting obligations and potentially seek to coordinate with First Nation governments and federal departments to reduce this burden.

The risk of duplication could be mitigated by clearly defining the role and responsibility of an AAG to ensure it occupies a distinct space in the oversight architecture. If an AAG had authority only to undertake recipient audits, it might avoid duplicating OAG practices. However recipient audits are limited to financial oversight and compliance and do not assess the performance of programs in terms of their aggregate impact on quality of life. Should an AAG be permitted this oversight of performance-based audit, there would be overlap with the existing OAG mandate. As noted earlier in this paper, the creation of an Aboriginal Auditor General would likely necessitate a fundamental review of the Auditor General of Canada's mandate with respect to First Nations oversight.

Institutional Capacity

The creation of an Aboriginal Auditor General presents an opportunity for institution building within Aboriginal communities. However, First Nations must have the capacity to respond to the demands of a new institution and the expertise to engage. In its 2006 position paper on *Accountability for Results*, which, among other things, calls for a First Nations Auditor General, the AFN cautions against hasty implementation of an AAG function. According to the AFN, capacity must first be developed through: long-term funding and strategic planning; comprehensive community planning; building a capable First Nation public service; and institution building.

With respect to establishing an Aboriginal Auditor General, the AFN makes the following qualification:

An effective AG is contingent on the capacity building discussed in the preceding paragraph [summarized above], as the financial and other management systems and standards must be in place to carry out effective audits and the human capacity must exist, both within FN governments and within the office of an FN Auditor General, before audit reports would be of significant use. That is why the AFN believes the process should begin with that capacity building and with the establishment of a First Nations Certification Institute that could assist FN governments in preparing their financial management systems for effective audits by establishing and maintaining standards and certifying individual FN governments as ready (Assembly of First Nations 2006, 7).

If an Aboriginal Auditor General were federally legislated, it might be considered as a complement to existing capacity-building initiatives, such as those introduced with Bill C-23 the *First Nations Fiscal and Statistical Management Act*. This Act created a new First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute with First Nations being given the discretion to opt-in.

A federally legislated AAG, with an opt-in provision to First Nation governments, would respect the right to self-determination. It would also provide the necessary flexibility with respect to the First Nation governance continuum, enabling communities to access resources and institutional capacity as they approach self-government. On the other hand, an opt-in provision is a less effective mechanism for improving accountability to Aboriginal citizens because it could be subject to political will and does not assume the same level of accountability for all. First Nation governments and political leaders that are subject to limited oversight and minimal accountability will have no incentive to seek oversight of an AAG. Conversely, those First Nations choosing to be subject to AAG oversight could be more likely to have strong governance systems that respect the accountability obligations to their population and an active citizenry that demands it. In this scenario, those Aboriginal populations with the greatest need for improved accountability and oversight might be least likely to have access to it.

Taxation

A number of policy experts and commentators have noted the relationship between taxation and good governance. Aboriginal Canadians are not subject to federal and provincial taxes and most First Nation governments do not exercise their right to tax their citizens. As Tom Flanagan points out in his book *First Nations? Second Thoughts*, “immunity from taxation” is seen as “a perpetual condition – an aboriginal right, a treaty right” that reflects the special relationship that exists between First Nations and the Crown (Flanagan 2000, 105). However, Flanagan argues that in the absence of taxation citizens do not pay for the activities of government and therefore “do not see it as an emanation of themselves” (Flanagan 2000, 104). The Institute on Governance echoes these sentiments in a 2008 Paper, *In Praise of Taxes: the Relationship of Taxation to Good Governance in a First Nations Context*. The Institute on Governance looks at international development theory as applied to First Nations and argues that a reliance on fiscal transfers means there is little correspondence between the source of funds and the recipients (Graham and Bruhn 2008).

Given that First Nations cannot fully replicate municipal or provincial governments, there may be a risk in assuming that First Nation governments should be subject to the full array of formal oversight as are provincial governments. There may be alternatives to formal oversight mechanisms that can still reinforce accountability of First Nation communities to their citizens.

Alternatives

An Auditor General function serves to hold a government accountable for the use of public funds, but it is not the sole mechanism for ensuring the accountability between First Nation governments and their citizenry.

For example, making existing departmental reports more accessible to First Nation citizens could reduce duplication and improve accountability. As noted earlier, in order to ensure compliance, First Nations are subject to audits and evaluations but may have little opportunity to react to findings and participate in resolutions. If First Nation citizens had greater access to these federal reports, they could be used to evaluate their own leadership. However, some communities may be unwilling to use federal reports as an authoritative source of information. Alternatively, if audits and evaluations were conducted in collaboration with First Nation governments and their communities, findings may be seen as more legitimate and increase engagement among First Nation citizens. Similarly, AANDC may benefit from direct input of First Nation governments into viable solutions to program deficiencies.

The Navajo Nation in the United States established an Ethics and Rules Committee, supported by an Ethics and Rules Office, to ensure that all elected officials and Navajo Nation employees are held accountable for their actions. In 1983, the Navajo Tribal Council established the Committee and passed legislation to create the Navajo Ethics in Government Law (Office of the Speaker 2010). The Ethics and Rules Committee and Office has a mandate to uphold the standards of conduct . . .

“to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions.” (Office of the Speaker 2010).

Any person may report a contravention of the Navajo Nation law. Allegations are then investigated by the Office and, if substantiated, referred to the Committee for a formal hearing (Office of the Speaker 2010). While this is clearly a departure from the technical nature of auditing practices, an ethics committee and the threat of formal retribution could have a real impact on spending practices and foster a culture of accountability.

This is by no means an exhaustive account of alternatives, but rather an opportunity to imagine accountability outside reporting, evaluation and auditing practices.

Conclusion

As in other forms of government, there can be a problematic gap in the accountability of First Nation governments to their own citizens. In some First Nations, this gap is filled by an internal moral authority; capable leadership that governs for the collective interest. Where this internal moral authority is lacking, however, accountability mechanisms and checks and balances must be created.

The considerations described above seek to illuminate some of the possible arrangements for an AAG. Some arrangements may be considered in tandem, or as interim measures. For example, it is possible that an AAG be established inside the OAG in the interim, while Aboriginal organizations, First Nations governments and citizens and the federal government partner to build those institutions that might eventually assume this oversight function. Similarly, taxation might be seen as a viable accountability mechanism in and of itself, and encouraged outside of the AAG discussion. In some cases, it is not for the federal government to necessarily lead, but rather support and partner with Aboriginal citizens to build capacity and institutional structures to improve accountability.

Different approaches have associated trade offs. For example, federal legislation could help to create formal institutions, professional auditing practices, and considerable oversight for First Nations governments. However, the imposition of these mechanisms could undermine the federal effort to engage in government-to-government relations. On the other hand, First Nations led initiatives may have greater credibility amongst First Nations citizens and help to build institutional capacity for Aboriginal Canadians. However, opt-in provisions, while respecting the self-government continuum, do not impose accountability equally across First Nation governments. These considerations and others are important in the discussion of an AAG.

Appendix – Historical Background

In late 2005, the Assembly of First Nations (AFN), in collaboration with the Government of Canada, launched the *Accountability for Results Initiative*. The purpose of this initiative was to improve accountability to First Nation citizens and create a mutual accountability relationship between First Nation governments and the Government of Canada. Among other things, the initiative sought to establish a First Nations Auditor General as a way of building institutional capacity to support these new relationships. Such an institution would offer Aboriginal Canadians an opportunity to hold their own political leaders and institutions to account as well as seek greater accountability from the Government of Canada. The *Accountability for Results Initiative* was not adopted in its entirety; however, the AFN continues to advocate for a First Nations Auditor General, recently drawing support from the former Auditor General of Canada Sheila Fraser. The *Accountability for Results* message was reiterated in December 2010 at the AFN Special Chief's Assembly. Resolution 50 *First Nation Governments Demonstrating Accountability* again sought to address accountability and transparency concerns among First Nations and marked a commitment to engage with the Government of Canada in "...joint efforts towards the development of specific First Nation governance institutional capacity such as a First Nations ombudsman and/or Auditor-General function" (Assembly of First Nations 2010).

These initiatives, as well as ongoing efforts by the Government of Canada, speak to the growing emphasis on accountability and its importance to Aboriginal Canadians and to the health of intergovernmental relations between federal and First Nation governments. However, a discussion of the current accountability relationships, between First Nations and local leadership, and First Nations and the Government of Canada, must first be understood in historical context.

Accountability

Mary Ellen Turpel-Lafond, in a paper prepared for the Royal Commission on Aboriginal Peoples, gave a historical account of ethics and accountability among First Nations' Governments. She sees the legacy of the *Indian Act* and its undermining of established leadership practices as an impediment to effective accountability. She writes,

The imposition of the first modern *Indian Act* in 1876, to manage and implement the Dominion government's regulation of First Nations' people in Canada was intended to provide for clearer Canadian governmental control over First Nations' peoples and their internal affairs. The *Indian Act* eliminated traditional forms of First Nations' government, at least in an official sense (many went underground), and replaced them with artificial, non-Aboriginal forms of rule which neither reflected First Nations' cultures nor the desires of the peoples for whom they were designed (Turpel-Lafond 1992, 9).

These non-Aboriginal forms of rule created a direct line of accountability from elected, council style governments to the Minister of Indian and Northern Affairs, effectively removing accountability to local citizens. She writes,

While the *Indian Act* provides for the reporting of band council activities to the Department of Indian Affairs, the absence of requirements for band councils to account to band members reinforces the concern over accountable government (Turpel-Lafond 1992, 13).

Band councils "wield[ed] extensive authority delegated by the Minister of Indian and Northern Affairs" and undermined traditional processes for appointing leaders and holding them to account (Turpel-Lafond 1992, 3). This created internal divisions among some communities and eroded the trust of Aboriginal peoples in these new, imposed political systems.

The Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples (RCAP) was given a mandate in 1991 to study "the evolution of the relationship among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole" and "propose specific solutions, [...] to the problems which have plagued those relationships and which confront aboriginal peoples today" (Royal Commission on Aboriginal Peoples 1996, Vol. 1 Ch. 1). This expansive mandate resulted in four years of consultative research, a 4000 page report, and 440 recommendations. Among many findings emerged the theme of accountability. For example, The Royal Commission (1996) found, "a widespread perception in some communities that their leaders rule rather than lead their people, and that corruption and nepotism are prevalent" (Volume 2, Part 1, P. 345-346). This was thought to be symptomatic of the imposition of the *Indian Act* and its electoral processes that undermined traditional leadership practices.

In a 1997 report, the Institute on Governance summarized the major conclusions of the 1996 Report of the Royal Commission on Aboriginal Peoples (RCAP). The report reads,

The Commission recommends that Aboriginal governments adopt a mix of formal and informal accountability mechanisms. Formal mechanisms could include codes of conduct for public officials; conflict of interest laws, policies or guidelines; and independent structures or agencies responsible for upholding and promoting the public interest and the integrity of governments (The Institute on Governance 1997, 13-14).

The government responded to the RCAP report in 1998 with *Gathering Strength: Canada's Aboriginal Action Plan*. Indeed, a new fiscal relationship was one of four major objectives highlighted in their response. In particular, this relationship sought to encourage "greater stability, accountability and self-reliance" and to develop "new financial standards with public account and audit systems that conform to accepted accounting principles" (Wherrett and Hurley 1999, 2).

The First Nations Governance Act

In October 2002, the Minister of Indian and Northern Affairs, Bob Nault, tabled Bill C-7, *The First Nations Governance Act*.³ It was an attempt to reform the *Indian Act* and provide an interim step towards self-government by improving democratic governance and accountability principles on reserve. The Act outlined new electoral processes for First Nation bands, financial management practices and sought to bring First Nations under the Canadian Charter of Rights and Freedoms. The Act "was not intended to replace the historical treaties, undermine ongoing treaty and self-government processes, or affect the government's fiduciary responsibilities toward First Nations people" (Hurley 2003). First Nations were critical of Bill C-7, suggesting the Minister had not adequately consulted First Nations throughout the development of the bill and for seeking to impose greater bureaucratic control over First Nations governance (Hurley 2003).

³ Bill C-7, an Act respecting leadership selection, administration and accountability of Indian bands, and to make related amendments to other Acts

In her opening statement to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, the Auditor General of Canada, Sheila Fraser, reflected on Bill C-7, suggesting that it sought to redesign accountability mechanisms and reporting requirements of band councils to their members, but did not propose any reforms to existing reporting requirements of First Nations to federal departments, nor did it account for capacity constraints on smaller First Nations. The *First Nations Governance Act* did not pass the second reading.

Streamlining First Nations Reporting to Federal Organizations

As stated on its website, the Office of the Auditor General of Canada is an “independent and reliable source of the objective, fact-based information that Parliament needs to fulfill one of its most important roles: holding the federal government accountable for its stewardship of public funds” (Office of the Auditor General of Canada 2011). Insofar as the Auditor General assesses the financial health of federal programs, it has become an important check on First Nations programs and spending. However, as stated at the forefront of many of its reports to Parliament, “[t]he Auditor General is not the auditor of First Nations” (Auditor General of Canada 2003, 2). “[O]nce the federal government transfers money [...] from the federal departments to native bands”, the auditor no longer has authority to investigate spending (Fiss 2005). However, in its auditing practices, the Auditor General has sought the perspectives and reactions of Aboriginal Canadians and relevant stakeholders at the community level, and as such, the Office has developed a strong and ongoing relationship with First Nations.

In the December 2002 Report of the Auditor General of Canada to the House of Commons, Chapter 1 looked at *Streamlining First Nations Reporting to Federal Organizations*⁴.

The Auditor General pointed out the evolving relationship between the federal government and First Nations, wherein communities were increasingly responsible for program implementation.

Chiefs and councils have assumed increasing responsibility for program delivery. Today, communities deliver the programs and administer annual budgets that can be in the millions of dollars (Auditor General of Canada 2002, 3)

At the same time, national concerns over “the adequacy of controls over public expenditures, particularly grants and contributions” have increased reporting requirements at the community level (Auditor General of Canada 2002, 3). The audit was critical of undue reporting burden, and a reporting relationship that did not adequately reflect the interests of First Nations, or encourage the integration of reporting requirements into existing governance structures and local reporting practices (Auditor General of Canada 2002, 8).

The Federal Accountability Act

“Accountability was one of the key themes of the 2006 election campaign [...] as a result of a series of controversies over the management of government programs and their costs” (Parliamentary Information and Research Service 2006). Thus, after being elected in January 2006, the Harper Government made accountability a priority and introduced the Federal Accountability Act in April 2006.

⁴ Note, this study did not take Bill C-7 into consideration.

The Act, among other things, extended the lobbying ban on former Ministers, aides and public servants, offered enhanced protection for whistleblowers and expanded the mandate of the Office of the Auditor General to “follow the dollar” notably enabling the OAG “to examine how aboriginal communities spend federal money” (Thompson 2006).

Auditor General Fraser, in a statement to the Legislative Committee on Bill C-2, the Federal Accountability Act,⁵ and its move to expand the mandate⁶ of her office said, “[w]e do not believe it is our role to routinely audit recipients of grants and contributions [...] this is the responsibility of the managers of those programs. Therefore, I expect that we would rarely exercise this option” (Fraser 2006). While the Federal Accountability Act gave the OAG “the right to audit funding to most First Nations,” Ms. Fraser suggests that building “institutional capacity” among First Nations would more appropriately encourage the development of accountability mechanisms.

We have engaged for some time in discussions with First Nations and government officials on the creation of a First Nations Auditor General. Furthermore, previous work of the Office has shown that First Nations programs are already the subject of extensive reporting and audit (Fraser 2006).

Echoing the sentiments of the Auditor General, Phil Fontaine, former National Chief of the Assembly of First Nations, opposed the imposition of Bill C-2 arguing that First Nations were already subject to audit by Indian and Northern Affairs and added that he would “prefer an aboriginal auditor general and ombudsman” (Thompson 2006).

The AFN suggested that these positions could “create two-way accountability between band leaders and Indian Affairs”. Neither position has been created (Popplewell 2010).

The Taxpayers Federation of Canada argued earlier, in 2005, that expanding the mandate of the OAG “to include native bands would not require as many tax dollars to operate a separate aboriginal auditor general” and adds that it would also ensure “the standard of audits, mandates and scrutiny [...] remain consistent” (Fiss 2005).

In January 2008, the Congress of Aboriginal Peoples (CAP) released a report entitled *Where does the money go?* in which it followed federal grants and contributions “to 2,054 recipients across 30 federal departments and agencies.” CAP National Chief Patrick Brazeau argued that to achieve transparency, all spending information should be streamlined and centralized and be readily available to First Nations and taxpayers” (Quesnel 2008). Brazeau was called to the Senate by Prime Minister Harper in December 2008, and is now “leading a Senate review into accountability on reserves”. He has argued accountability concerns “could be addressed if First Nations leaders were brought under the Federal Accountability Act, which is supposed to increase administrative transparency, oversight and accountability” (Popplewell 2010).

⁵ Bill C-2, an Act providing for Conflict of Interest Rules, Restrictions on Election Financing and Measures Respecting Administrative Transparency, Oversight and Accountability (the Federal Accountability Act).

⁶ Bill C-2 would expand the mandate of the OAG, “to what has been called “following the dollar” to any recipients of public funds who have received \$1 million or more over five years in the form of grants, contributions, or loans” (Sheila Fraser, *Opening Statement to the Legislative Committee on Bill C-2, 2006 9-May*, http://www.oag-bvg.gc.ca/internet/English/osh_20060509_e_23458.html (accessed 2011 29-April)).

The First Nations Transparency Act

In 2010, the Canadian Taxpayers Federation, a taxpayer watchdog group, revealed the high salaries paid to some First Nations politicians (Popplewell 2010, The National Post 2011). The group used the revelation to call for greater transparency in funding of First Nations.

On October 1, 2010, Conservative MP Kelly Block tabled Bill C-575 (currently Bill C-27), *the First Nations Financial Transparency Act*.⁷ The Act would seek to make public on an annual basis the remuneration paid to First Nations councilors and chiefs from federal grants and contributions. Liberal MP Andrew Lang argued the Bill presumed "a lack of trust and [would] counteract efforts made in recent decades to improve relations between Aboriginal communities and other jurisdictions" (Lang 2010).

In response to Bill C-575, National Chief Shawn Atleo of the Assembly of First Nations, repeated the sentiments of his predecessor, Phil Fontaine, in favour of a "First Nations auditor general as well as an ombudsman," and development of, "a system of accountability that would track band leaders' salaries as well as all of Ottawa's spending on aboriginal affairs" (Scoffield 2011). Atleo argues that First Nations have an interest in improving transparency, and thus, reform need not be imposed, but should rather seek to empower First Nations to build capacity by developing accountability mechanisms.

In December 2010, at a Special Chiefs Assembly, the Assembly of First Nations passed Resolution 50 *First Nation Governments Demonstrating Accountability*, a direct response to Bill C-575. The Resolution deemed the First Nations Transparency Act both "unnecessary and heavy handed" stating that not only did it duplicate existing reporting requirements, but concentrated authority with the Minister, thus serving "to only further exasperate an already adversarial relationship" (Assembly of First Nations 2010a). Resolution 50-2010 reaffirmed First Nations commitment to accountability and transparency and reiterated its primary responsibility to its own First Nations citizens. Furthermore, it sought collaboration with the Government of Canada "in the genuine interest of accountability" and,

"joint efforts towards the development of specific First Nation governance institutional capacity such as a **First Nations ombudsperson and / or Auditor-General** function as mandated and advanced by the Assembly of First Nations and Chiefs-in-Assembly in 2006." (Assembly of First Nations 2010a).

In March 2011, Bill C-575 passed second reading (The National Post 2011).

⁷ BILL C-575 An Act respecting the accountability and enhanced financial transparency of elected officials of First Nations communities

Works Consulted

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